

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 567 - SB 1049

February 25, 2013

SUMMARY OF BILL: Requires all municipally-owned or rural cooperatively-owned utilities, upon receiving a request for pole attachment, to negotiate in good faith with telecommunication service providers and cable operators to arrive at pole attachments rates, terms, and conditions that are just, reasonable, and non-discriminatory. Authorizes either party involved in a pole attachment rate dispute, after a 30-day period in which no agreement has reached between parties, to request the Administrative Law Judge (ALJ) of the Department of State (SOS) to oversee negotiations. Requires the ALJ to have jurisdiction to resolve disputes between parties, the authority to enforce any agreed-upon terms, and the authority to equally charge both parties for any costs associated with conducting the adjudication. Authorizes the ALJ to take into consideration the application of rules and regulations set by the Federal Communications Commission in the Federal Communications Act of 1934 (FCC formula), when determining rates, terms, and conditions of the agreement.

ESTIMATED FISCAL IMPACT:

Increase State Revenue - \$180,000/One-Time

Decrease Local Revenue - Exceeds \$7,000,000/Recurring
Increase Local Expenditures - \$90,000/One-Time*

Assumptions:

- This bill will not affect or impair any contracts in effect before the effective date of this bill
- Applies only to contracts entered into or renewed after the effective date.
- According to the SOS, this bill would generate approximately 120 cases for the Administrative Procedures Division (APD). The APD charges \$100.00 per judge-hour to conduct contested case hearings.
- According to the SOS, it is estimated that each case will require two days of judge time, which includes travel, hearing time, and order preparation, equaling 15 hours per case; resulting in a one-time increase in state revenue estimated to be \$180,000 (\$100.00 per judge hour x 15 judge hours x 120 cases).
- Given that each party to the dispute is required to pay an equal share of the costs, there will be a one-time increase in local government expenditures of \$90,000. The remaining \$90,000 of costs will be borne by the private pole attaching entity.

HB 567 - SB 1049

- Based on information provided from a survey conducted by the Tennessee Municipal Electric Power Association (TMEPA) in 2012, with 83 percent of their membership reporting, there are 1,573,340 TMEPA poles statewide.
- The average annual fee charged by TMEPA for cable TV (CATV) is \$18.55 per pole, with 784,202 CATV attachments.
- The average annual fee charged by TMEPA for a telephone attachment is \$25.94 per pole, with 762,270 telephone attachments.
- In the event the ALJ adopts the FCC formula, it is estimated that annual CATV attachment rates will be lowered to an average of \$8.00 per pole, and telephone attachment rates will be lowered to an average of \$16.00 per pole.
- Adopting the average FCC formula will result in a recurring decrease in CATV attachment fee revenue estimated to be \$8,273,331 $[(\$18.55 - \$8.00) \times 784,202]$, and a recurring decrease in telephone attachment fee revenue estimated to be \$7,576,964 $[(\$25.94 - \$16.00) \times 762,270]$. Therefore, a total recurring decrease in local government revenue of \$15,850,295 $(\$8,273,331 + \$7,576,964)$.
- While it cannot be determined what rate the ALJ will choose during mediation, any decrease to the current rates will result in a recurring decrease in local government revenue.
- It can be reasonably assumed that during mediation a compromise on the new rate will be reached. Such rate will likely be between the current rate and the rate calculated using the FCC formula. Therefore, the recurring decrease in local government revenue is reasonably estimated to exceed \$7,000,000.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/jrh